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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,749	03/29/2004	Robert J. Simmons	J-BSIM.1013	5475
56703 7590 05/09/2008 ROBERT D. VARITZ, P.C. 4915 SE 33RD PLACE PORTLAND, OR 97202				
EXAMINER FOX, CHARLES A				
ART UNIT 3652		PAPER NUMBER		
MAIL DATE 05/09/2008		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/812,749

**Applicant(s)**

SIMMONS, ROBERT J.

**Examiner**

Charles A. Fox

**Art Unit**

3652

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 February 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 5 and 7-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 7 and 8 is/are rejected.
- 7) ☒ Claim(s) 5 and 9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

This application has been reassigned to Examiner Charles A. Fox.

In view of the appeal brief filed on February 20, 2008, PROSECUTION IS HEREBY REOPENED. New rejections are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Saúl J. Rodríguez/

Supervisory Patent Examiner, Art Unit 3652

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 7 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for holding elongate beams, does not reasonably provide enablement for all elongate building beam components. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, make the invention commensurate in scope with these claims. Specifically the device as claimed in claims 1 and 7 can not hold a T-shaped member. The structure as claimed in claims 1 and 7 is deficient for holding all beam types. Removing the all beam types language from claims 1 and 7 will render this rejection moot.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Regarding claims 1,5,7 and 9 use of the phrase "cage-like" or "beam-like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "-like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d). In any art rejections below the claims are treated as being a cage or a beam where the indefinite language is used, as best understood by the examiner. Clarification is required.

Claim1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 11 the phrase "consisting of" is used to define the deck support structure. Later in the claim additional structure is added to this deck. It is not clear if the deck is made up of a closed set of parts (consisting of) or an open ended set

Art Unit: 3652

of parts. Further claim 1 has limitations where the deck is supported by "a pair of upright supports". This is not accurate as each horizontal deck beam is supported by a pair of upright supports. Clarification is required. In any art rejections below the claim is treated as using the word comprising in place of consisting, and each horizontal beam is treated as having a pair of supports.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calletti et al. in view of Vandelinde. Calletti et al. US 3,379,281 teaches a work platform for handling steel building beam comprising:

a work platform with an open cage structure;

said platform having a substantially horizontal deck (44) surrounded by a substantially upstanding partial wall structure;

a set of fork receivers(54) for access by a lifting machine;

an upper deck structure (28,30) for holding a plurality of elongate beams;

said upper deck structure having an upper portion on the fork receiving side of the device and an open end opposite thereto. Calletti et al. does not teach the second deck as being above the wall structures. Vandelinde US 4,749,060 teaches a work platform comprising:

a deck structure (22,51) for creating a platform for workers;  
a plurality of substantially vertical walls upstanding from said deck;  
a pair of horizontal supports (100) spaced over head of said deck and walls;  
said supports being each supported by a pair of uprights (102). It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Calletti et al. with an overhead support as taught by Vandelinde in order to maintain a separation between workers on the platform and the material being moved, thereby decreasing the risk of crushing a worker.

Claims 2 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Calletti et al. and Vandelinde as applied to claims 1 and 7 above, and further in view of Crocker et al. Regarding claims 2 and 8 Calletti et al. and Vandelinde teach the limitations of claims 1 and 7 as above, they do not teach a pivotal bridge extension to the upper deck structure. Crocker et al. teach a device for handling elongate objects comprising:

two horizontally arranged surfaces(20) for moving the object along;  
each surface having a pivotal element (44) that keeps the object from moving past an end of said surface when in a substantially vertical position and form a bridge to a second horizontal surface when in a substantially horizontal position. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Calletti et al. with a pivotal member as taught by Crocker et al. in order to keep the elongate members secure on the deck during transport and to extend the reach of said deck during unloading of the device.

***Response to Amendment***

This action is based upon claims filed on July 30, 2007.

***Allowable Subject Matter***

Claims 5 and 9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The closest prior art of Calletti and Crocker does not teach or suggest a cross member on the pivotal bridge sections of the upper deck.

***Response to Arguments***

Applicant's arguments filed February 20, 2008, with respect to the rejection(s) of claim(s) 1 and 7 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Calletti et al. in view of Vandelinde.

The prior art made of record and not relied upon, but considered pertinent to applicant's disclosure is: Meagher 1958, Hickling 1984, Dudley et al. 1987, McConville et al. 1991, Nguyen et al. 1997 and Herschbach 2001.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached on 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saul Rodriguez can be reached on 571-272-7097. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles A. Fox/  
Primary Examiner, Art Unit 3652